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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 5305|58|Law(B)4. *Dated, Trivandrum, 29th January 1960.*

The following President's Act enacted on the 25th January, 1960, is published for general information.

By order of the Governor,
P. NARAYANASWAMI,
Law Secretary.

THE KERALA CO-OPERATIVE LAND MORTGAGE BANKS ACT, 1960

(No. 1 of 1960)

Enacted by the President in the Tenth Year of the Republic of India.

An Act to facilitate the working of co-operative land mortgage banks in the State of Kerala.

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959(50 of 1959), the President is pleased to enact as follows:—

CHAPTER I

Preliminary

1. **Short title, extent and commencement.**—(1) This Act may be called the Kerala Co-operative Land Mortgage Banks Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of Directors of the Central Land Mortgage Bank;

(b) "Central Mortgage Bank" means the Kerala Co-operative Central Land Mortgage Bank, Limited;

(c) "committee", in relation to a primary mortgage bank, means the Board of Directors or Board of Management or the Panchayat or the Committee of management or the governing body to whom the management of its affairs is entrusted;

(d) "co-operative society" means a co-operative society registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951 or the Madras Co-operative Societies Act, 1932;

(e) "Malabar" means the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37 of 1956);

(f) "notified order" means an order notified in the Gazette;

(g) "prescribed" means prescribed by rules made by the Government under this Act;

(h) "primary mortgage bank" means a co-operative land mortgage bank registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932, and admitted as a member of the Central Mortgage Bank;

(i) "Registrar" means the person appointed by the Government to be the Registrar of Co-operative Societies for the State;

(j) "State" means the State of Kerala;

(k) "Trustee" means the Trustee referred to in section 5.

3. **Admission of land mortgage banks registered under the Madras Co-operative Societies Act, 1932, as members of the Central Mortgage Bank.**—Notwithstanding anything contained in the Travancore-Cochin Co-operative Societies Act, 1951, it shall be lawful for the Central Land Mortgage Bank, to admit as its member a co-operative land mortgage bank registered or deemed to be registered under the Madras Co-operative Societies Act, 1932; and any such admission made before the commencement of this Act shall be deemed to have been lawfully made.

CHAPTER II

Debentures

4. **Issue of debentures by the Board.**—(1) (a) With the previous sanction of the Trustee, the Board may issue debentures of one or more denominations for such period as it may deem expedient on the security of the mortgages taken by the Central Mortgage Bank and its other assets and mortgages transferred or deemed under the provisions of section 23 to have been transferred by the primary mortgage banks to the Central Mortgage Bank.

(b) Such debentures may contain a term fixing a period not exceeding twenty years from the date of issue during which they shall be irredeemable or reserving to the Board the right to call in, at any time, any of the debentures in advance of the date fixed for redemption after giving to the debenture-holder concerned not less than three months' notice in writing.

(2) The total amount due on the debentures issued by the Board and outstanding, at any time, shall not exceed the aggregate of the amounts due on the mortgages and other assets referred to in clause (a) of sub-section (1) and the amounts paid thereunder and remaining in the hands of the Board or of the Trustee at such time.

5. **Appointment of Trustee and his powers and functions.**—(1) The Registrar, or where the Government appoint any other person in this behalf, such person, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the Central Mortgage Bank to the holders of debentures issued by the Board. The mortgages executed in favour of the Central Mortgage Bank and other mortgages and assets transferred or deemed under the provisions of section 23 to have been transferred to the Central Mortgage Bank shall vest in the Trustee from the date of execution or transfer. The holders of the debentures shall have a floating charge on all such mortgages and assets, on the amounts paid under such mortgages and remaining in the hands of the Board or the Trustee and on the other properties of the Central Mortgage Bank. The powers and functions of the Trustee shall be governed by the instrument

of trust executed between the Bank and the Trustee as modified from time to time by mutual agreement between the Board and the Trustee.

(2) The Trustee appointed under sub-section (1) shall be a corporation sole by the name of the Trustee for the debentures and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

6. **Guarantee by Government on principal of and interest on debentures issued under section 4.**—(1) The principal of and the interest on the debentures issued under section 4 to such maximum amount as may be fixed by the Government and subject to such conditions as they may think fit to impose, shall, subject to the provisions of sub-section (3), carry the guarantee of the Government.

(2) The Government may, after consulting the State Legislative Assembly, increase the maximum amount of any guarantee given by them.

(3) The Government may, after consulting the Board and the Trustee,—

(a) by notification in the Gazette, and

(b) by notice for not less than 14 days in such of the principal newspapers in the State and in other States in India, as the Government may select in this behalf,

discontinue any guarantee given by them or restrict the maximum amount thereof or modify the conditions subject to which it is given, with effect from a specified date, not being earlier than six months from the date of publication of the notification in the Gazette.

In cases where the maximum amount of the guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified, the notification and notice aforesaid shall set forth, with sufficient clearness, the scope and effect of the restriction or modification.

Explanation.—The withdrawal, restriction or modification of any guarantee under this sub-section shall not affect, in any way, the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect.

7. **Power of Board to make regulations.**—The Board may, subject to the approval of the Trustee, make regulations not inconsistent with the provisions of this Chapter,—

(i) for fixing the period of debentures and the rate of interest payable thereon;

(ii) for calling in debentures after giving notice to debenture-holders;

(iii) for the issue of new debentures in place of debentures damaged or destroyed;

(iv) for converting one class of debentures into another class or debentures bearing a different rate of interest; and

(v) generally for carrying out the provisions of this Chapter.

CHAPTER III

Distraint and sale of produce

8. **Distraint when to be made.**—(1) If any instalment payable under a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank or any part of such instalment has remained unpaid

for more than one month from the date on which it fell due, the Board or the Committee may, in addition to any other remedy available to them, apply to the Registrar or to any other person appointed by the Government under section 3 of the Travancore-Cochin Co-operative Societies Act, 1951, or under section 3 of the Madras Co-operative Societies Act, 1932, to assist the Registrar, for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land including the standing crops thereon. On receipt of such application the Registrar or such other person may, notwithstanding anything contained in the Transfer of Property Act, 1882, (4 of 1882), take such action as is necessary to distrain and sell such produce:

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(2) The distress shall not be excessive; the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of the sale.

9. **Distraint how to be effected.**—(1) Before or at the time when a distraint is made under section 8, the distrainer shall serve or cause to be served upon the defaulter a written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode or to his authorised agent, or when such service cannot be effected, by affixing a copy of the demand on some conspicuous part of his abode and of the mortgage land.

10. **Sale of property distrained.**—(1) If, within fifteen days from the date of service of the demand referred to in section 9, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and the costs of the sale.

(2) From the proceeds of such sale, a deduction shall be made at such rate as may be fixed by the Government from time to time on account of the costs of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which the distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of the sale.

11. **Power of Government to make rules.**—The Government may make rules not inconsistent with the provisions of this Chapter,—

(i) for the manner of effecting distraint;

(ii) for the custody, preservation and sale of the distrained property;

(iii) for the investigation of claims by persons other than the defaulter to any right or interest in the distrained property and for the postponement of the sale pending such investigation;

(iv) for the immediate sale of perishable articles;

(v) for fixing the rates of deduction on account of the costs of sale of distrained properties; and

(vi) generally for the purpose of carrying out the provisions of this Chapter.

CHAPTER IV

Power of sale

12. **Power of sale when to be exercised.**—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), where a power of sale without the intervention of the court is expressly conferred on the Central Mortgage Bank, or a primary mortgage bank, by the mortgage deed, the Board, or the Committee of such primary mortgage bank, or any person authorised by the Board or such Committee, as the case may be, shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to them, to bring the mortgaged property to sale without the intervention of the court.

(2) No such power shall be exercised unless—

(a) the Board or such Committee has given an opportunity to the mortgagor or mortgagors to show cause why the property may not be sold without the intervention of court;

(b) notice in writing requiring payment of such mortgage money or part thereof has been served upon—

(i) the mortgagor or each of the mortgagors;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(iii) any surety for the payment of the mortgage debt or any part thereof; and

(iv) any creditor of the mortgagor, who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(c) default has been made in payment of such mortgage money or part thereof for three months after such service:

Provided that the obligation to give such notice under sub-clauses (ii) and (iv) of clause (b) shall be confined to cases where the Board or the Committee has notice of such claims:

Provided further that where a mortgage has been executed by the members of a Marumakkathayam Tarwad or Nambudiri Illom or Aliyasantana family, it shall be necessary to send notice under this sub-section only to the three seniormost members thereof.

13. **Application for sale and manner of sale.**—(1) For exercising the power of sale conferred by section 12, the Board or the Committee or any other person duly authorised by the Board or such Committee, as the case may be, may apply to the sale officer appointed in that behalf under section 21 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in section 12, sell such property in the manner prescribed.

(2) The sale shall be by public auction and shall be held in the village where the mortgaged property is situate or at the nearest place of public resort if the sale officer is of opinion that the property is likely to sell to better advantage there.

14. Application to set aside sale on deposit and confirmation of sale in default or on dismissal of such application.—(1) When a mortgaged property has been sold under this Chapter, the mortgagor or any person having a right or interest therein affected by the sale, may, at any time within thirty days from the date of sale, apply to the Board or the Committee of the primary mortgage bank concerned, as the case may be, to have the sale set aside on his depositing at the office of the concerned bank—

(a) for payment to the Central Mortgage Bank or the primary mortgage bank, as the case may be, the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the bank in bringing the property to sale; and

(b) for payment to the purchaser a sum equal to five per cent of the purchase money.

(2) If such deposit is made, the Board or the Committee, as the case may be, may in its discretion, make an order setting aside the sale.

(3) Where no application is made under sub-section (1) or where such application is made and disallowed, the Board or the Committee, as the case may be, shall apply to the Registrar or any other officer empowered by the Government in this regard to make an order confirming the sale and, on the Registrar or such officer confirming the sale, it shall become absolute and the property shall be deemed to have vested in the purchaser from the time when the property is sold.

15. **Distribution of sale proceeds.**—(1) The proceeds of every sale under this Chapter shall be applied by the sale officer, **first**, in payment of all costs, charges and expenses properly incurred by him as incidental to the sale or any attempted sale; **secondly**, in payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold, **thirdly**, in payment of the principal money due on account of the mortgage; and **lastly**, the residue, if any, shall be paid to the person proving himself interested in the property sold or, if there are more such persons than one, then to such persons, according to their respective interests therein or upon their joint receipt.

(2) (a) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit in a court to establish the right he claims.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from the communication of his decision to all the persons concerned, or, if a suit has been instituted within the said period of thirty days by any such person and due notice thereof is given to him before the payment, until the suit is disposed of or otherwise than in accordance with the decision of the court thereon.

(3) Any deficit occurring after the sale of the mortgaged land may also be recovered in the manner provided in this Chapter from any other assets of the mortgagor.

Explanation.—In this section and in section 17 "court" means the civil court having jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situate.

16. **Certificate to purchaser.**—Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be the purchaser. Such certificate shall bear the date on which the sale became absolute.

17. **Delivery of property to purchaser.**—(1) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or of some person claiming under a title, other than a lease, created by the mortgagor subsequent to the mortgage in favour of the Central Mortgage Bank or primary mortgage bank, as the case may be, and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(2) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, and after giving notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

(3) The provisions of rules 97 to 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis, apply to the cases dealt with in sub-sections (1) and (2).

18. **Right of Central Mortgage Bank or primary mortgage bank to purchase the mortgaged property at sale.**—It shall be competent to the Central Mortgage Bank or a primary mortgage bank to purchase the mortgaged property sold under this Chapter, but the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee.

19. **Appointment of receiver and his powers.**—(1) The Board may on its own motion or on the application of any branch of the Central Mortgage Bank or the Committee of a primary mortgage bank under circumstances in which the power of sale conferred by section 12 may be exercised, appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him, his expenses of management including his remuneration, if any, as may be fixed by the Board and to apply the balance in accordance with the provisions of sub-section (8) of section 69-A of the Transfer of Property Act, 1882 (4 of 1882).

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint a receiver where the mortgaged property is already in the possession

of a receiver appointed by a civil court; but the Board or the Committee of a primary mortgage bank, as the case may be, may, through the Secretary of the Central Mortgage Bank or the primary mortgage bank, as the case may be, petition to such court to direct the receiver of such court to apply any part or the whole of the surplus remaining in his hands after meeting the expenses of his management to the discharge of the mortgage amount or part thereof, as the case may be.

20. **Title of purchaser not to be impeached on the ground of irregularity, etc.**—When a sale has been made in the professed exercise of a power of sale under section 12 and has been confirmed under sub-section (3) of section 14, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Central Mortgage Bank or the concerned primary mortgage bank, as the case may be.

21. **Appointment of sale officer.**—The Registrar may appoint sale officers for the purpose of conducting sales under this Chapter.

22. **Power of Government to make rules.**—The Government may make rules not inconsistent with this Chapter—

(1) for the due proclamation and conduct of the sale;

(2) for the recovery of the expenses of proclamation and sale;

(3) for the deposit of the purchase money;

(4) for the re-sale of the property, if the purchase money is not deposited;

(5) for the registration of claims in respect of properties mortgaged to the Central Mortgage Bank or a primary mortgage bank; and

(6) generally for carrying out the provisions of this Chapter.

CHAPTER V

Miscellaneous

23. **Mortgages executed in favour of mortgage bank, etc., to stand vested in Central Mortgage Bank.**—The mortgages executed in favour of, and all other assets transferred to a primary mortgage bank by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such primary mortgage bank to the Central Mortgage Bank.

24. **Powers of mortgage bank in case the mortgaged property is insufficient.**—Where any property mortgaged to the Central Mortgage Bank or a primary mortgage bank is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the Board or the Committee of the primary mortgage bank of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the Board or the Committee, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the Board or the Committee, as the case may be, shall be entitled to take action against the mortgagor under section 8 or section 12 for the recovery thereof.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be

specified in the bye-laws of the Central Mortgage Bank or the concerned primary mortgage bank, as the case may be.

25. **Power of Board or of Trustee to direct distraint and sale of produce and the sale of mortgaged property, etc.**—(1) The Board or the Trustee may direct the Committee of a primary mortgage bank to take action against a defaulter under section 8, section 12, or section 24 and if the Committee neglects or fails to do so, the Board or the Trustee may take such action.

(2) (a) where such action is taken by the Board, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the primary mortgage bank and to its Committee in the said provisions were references to the Central Mortgage Bank and the Board, respectively.

(b) where such action is taken by the Trustee, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the primary mortgage bank or to its Committee in the said provisions were references to the Trustee.

26. **Bank's right to improvements effected by lessee.**—Notwithstanding anything contained in the Kerala Compensation for Tenants Improvements Act, 1958, the improvements, if any, made subsequent to the date of the mortgage by a lessee of property mortgaged to the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall be treated as accession to the mortgaged property and shall be available to such Bank for the realisation of the mortgaged amounts.

27. **Mortgage not to be questioned on insolvency of mortgagor.**—Notwithstanding anything contained in the Insolvency Act, 1955, a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give such mortgage bank a preference over the other creditors of the mortgagor.

28. **Priority of mortgage over certain claims of the Government.**—(1) A mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, after the commencement of this Act, shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 (19 of 1883), or the Agriculturists' Loans Act, 1884 (12 of 1884), or the Cochin Agricultural Improvement Loans Act, IV of 1093 or the Travancore Land Improvements and Agricultural Loans Act (Travancore Act IX of 1094), granted after the execution of the mortgage.

(2) Notwithstanding any enactment or rule of law, a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall take precedence over any attachment or oral mortgage over the properties, where after publication of a notice in the prescribed form, such claim or interest has not been notified to such Bank within the time prescribed in the said notice.

(3) The Government may make rules prescribing the form of the notice under this section and the manner of its publication.

29. **Right of mortgage bank to pay prior debts of mortgagor.**—Where a mortgage is executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, for payment of prior debts

of the mortgagor, such Bank may, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882 (4 of 1882), by notice in writing, require any person to whom any such debt is due to receive payment of such debt or part thereof from the Bank at its registered office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice, except in cases where such person proves to the satisfaction of the Board or the Committee of the primary mortgage bank, as the case may be, that the failure to receive notice or payment was due to causes beyond his control:

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

30. **Power to summon witnesses and requisition documents.**—(1) Subject to such restrictions, limitations and conditions as may be prescribed, the Registrar and officers subordinate to the Registrar who are authorised by him in this behalf by general or special order in writing, and such other officials engaged in the relief of rural indebtedness or officers of co-operative banks which are registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951 or the Madras Co-operative Societies Act, 1932, as the Government may, by notification in the Gazette, authorise in this behalf, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses.

(2) Any of the officers authorised by or under sub-section (1) may require any person present before him to furnish any information or to produce any document then and there in his possession or power, relevant to the inquiry.

(3) Any officer before whom any document is produced under sub-section (1) or sub-section (2) shall have power to take, or to authorise the taking of, such copies of the document or of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or the entries therein, as the case may be.

(4) (a) Any person who wilfully or without reasonable excuse disobeys any summons, requisition or order issued under sub-section (1) or sub-section (2), shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing disobedience with an additional fine which may extend to five rupees for every day during which such disobedience continues after conviction for the last such disobedience.

(b) No court inferior to that of a Magistrate of the first class shall try any offence under clause (a).

(c) Every offence under clause (a) shall, for the purposes of the Code of Criminal Procedure, 1898 (5 of 1898), be deemed to be non-cognizable.

(d) No prosecution shall be instituted under clause (a) without the previous sanction—

(i) of the Registrar in case the summons, requisition or order alleged to have been disobeyed was issued by the Registrar or any person subordinate to him or by any officer of a co-operative bank; and

(ii) of the Collector of the district in other cases.

Such sanction shall not be given without giving the party concerned an opportunity to be heard.

(5) The Government shall have power to make rules for giving effect to the provisions of this section.

31. **Registration of documents executed on behalf of the Central Mortgage Bank or of a primary mortgage bank.**—(1) Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), it shall not be necessary for any Director, Secretary or other officer of the Central Mortgage Bank or of a primary mortgage bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such Director, Secretary or Officer for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

32. **Power of mortgage bank to receive moneys and grant valid discharges notwithstanding assignment of mortgage deeds to the Central Mortgage Bank.**—Notwithstanding that a mortgage executed in favour of a primary mortgage bank has been transferred, or is deemed under the provisions of section 23 to have been transferred, to the Central Mortgage Bank—

(a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Board or the Trustee and communicated to the mortgagor, be payable to the primary mortgage bank and such payment shall be as valid as if the mortgage had not been so transferred; and

(b) the primary mortgage bank shall, in the absence of any specific direction to the contrary issued by the Board or the Trustee and communicated to the primary mortgage bank be entitled to sue on the mortgage or take any other proceedings for the recovery of the moneys due under the mortgage.

33. **Special provisions for mortgages, executed by managers of joint Hindu families, karanavans of Marumakkathayam, Tarwards or Tavazhis or of Nambudiri Illoms, etc.**—(1) Where a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, either before or after the commencement of this Act, is called in question on the ground that it was executed by the manager of a joint Hindu family or the karnavan of a Marumakkathayam tarwad or tavazhi or of a Nambudiri Illom, or the manager of a Thiyya or Ezhava

family, or the ejaman or ejamanathi of an Aliyasantana family, for a purpose not binding on the members thereof, whether majors or minors, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party raising it.

(2) A mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank by the manager of a joint Hindu family or the karnavan of a Marumakkathayam tarwad or tavazhi or of a Nambudiri Illom or the manager of a Thiyya or Ezhava family or the ejaman or ejamanathi of an Aliyasantana family shall be binding on the members thereof, whether majors or minors, if the loan secured by the mortgage was granted for any of the following purposes, namely:—

(a) the improvement of agricultural land or of the methods of cultivation; and

(b) the purchase of land.

34. **Special provisions for mortgages by tenants.**—Where a tenant mortgages his holding in favour of a primary mortgage bank, the following provisions shall apply so long as the mortgage subsists, notwithstanding anything to the contrary contained in any law relating to tenancy or in any custom or contract—

(i) both before and after granting the loan secured by the mortgage, the primary mortgage bank shall give notice in writing to the londlord of the tenant, and if such landlord is himself the tenant of another londlord, also to that landlord, and likewise to every superior landlord from whom interest in the holding is derived, up to and including the landowner;

(ii) every landlord to whom notice is given under clause (i) shall give not less than fifteen days' notice in writing to the primary mortgage bank before instituting a suit for bringing the holding of his tenant (whether such tenant be the mortgagor or a superior landlord) to sale for default in payment of rent or michavaram or jenmikaram or for evicting such tenant from the holding;

(iii) the tenant who has mortgaged the holding to the primary mortgage bank shall not except with the previous permission of the Bank, surrender his holding or any part thereof to his landlord or deal with it in any other manner, and no such transaction entered into by the tenant without such permission shall affect in any way the interest of the Bank in the holding;

(iv) in a suit for eviction instituted against the tenant who has mortgaged the holding to the primary mortgage bank, the Bank shall, on application to the court in which the suit is instituted, be entitled to be paid out of the amount of compensation, if any, deposited in court under section 5 of the Kerala Compensation for Tenants Improvements Act, 1958, the moneys due to the Bank under the mortgage;

(v) if, on the expiry of the tenancy of the tenant who has mortgaged the holding to the primary mortgage bank, the tenant does not renew the tenancy, the Bank shall be entitled to obtain a renewal of the tenancy on behalf of the tenant and any renewal fee paid by the Bank shall be added to the principal money due under the mortgage;

(vi) if the tenant who has mortgaged the holding to the primary mortgage bank makes default in the payment of any rent or michavaram or jenmikaram due to his landlord or the Government, as the case may be, the Bank shall be entitled to pay the same to the landlord or the Government and the amount so paid shall be added to the principal money due under the mortgage.

Explanation.—In so far as the rent or michavaram is payable in kind, the primary mortgage bank shall have the right to pay the value thereof calculated at the rate or rates notified by the Government from time to time in the Gazette;

(vii) where the primary mortgage bank pays any renewal fee, rent, michavaram or jenmikaram under clause (v) or clause (vi), it shall be entitled to regard the whole of the mortgage money as having become payable and, after giving a reasonable opportunity to the tenant to repay the whole of the said money or such portion thereof as may be determined by the Bank, to bring the holding to sale under the provisions of Chapter IV of this Act.

35. **Proof of documents or entries in documents.**—The Central Mortgage Bank or any primary mortgage bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such documents; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

36. **Chapters III and IV to apply to loans advanced by mortgage banks from funds not borrowed from the Central Mortgage Bank.**—The provisions of Chapters III and IV shall apply also to loans advanced by primary mortgage banks from funds which have not been borrowed from the Central Mortgage Bank and loans taken over by the Central Mortgage Bank from the Travancore Credit Bank.

37. **Service of notice under the Act.**—Whenever under the provisions of this Act, notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post.

38. **Sections 102, 103 and rules under section 104 of the Transfer of Property Act, 1882, to apply to such notices.**—The provisions of sections 102 and 103 of the Transfer of Property Act, 1882 (4 of 1882), and of any rules made by the High Court under section 104 of that Act, for carrying out the purposes of the said sections, shall apply, so far as may be, in respect of all notices to be served under this Act.

39. **Officers of the Bank not to bid at sales.**—At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to the Central Mortgage Bank or any primary mortgage bank, no Director, Secretary or other officer of the Central Mortgage Bank or such primary mortgage bank, as the case may be (except on behalf of the bank of which he is a Director, Secretary or other officer), and no sale officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

40. **Delegation of powers by Board.**—The Board may, if it thinks fit, delegate all or any of its powers under sections 12, 19 and 25 to any executive committee constituted by it and consisting of two or more of its members.

41. **Starting of branch banks.**—The Board may, from time to time, with the previous sanction of the Registrar, start branches of the Central Mortgage Bank at such convenient centres as may be decided upon and carry on operations through them.

42. **Powers of Board to make regulations.**—Notwithstanding anything contained in the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932 or the rules made under the said Acts, the Board shall have general power of supervision over the primary mortgage banks and may make regulations not inconsistent with this Act or the rules made thereunder—

(a) for the inspection of the account books and proceedings of primary mortgage banks;

(b) for the submission of returns and reports by primary mortgage banks in respect of their transactions;

(c) for the periodical settlement of accounts between primary mortgage banks and the Central Mortgage Bank and for the payment of the amounts recovered by primary mortgage banks on mortgages transferred, or deemed under the provisions of section 23 to have been transferred, to the Central Mortgage Bank;

(d) prescribing the form in which applications to primary mortgage banks for loans should be made and for the valuation of the properties offered as security for such loans;

(e) for the investment of moneys realised from the mortgagors; and

(f) generally for the purpose of safeguarding the interests of the parties concerned and for carrying out the purposes of this Act.

43. **Certain rights and liabilities of the Cochin Co-operative Land Mortgage Bank to continue in that Bank.**—Notwithstanding anything contained in this Act, all assets, rights and liabilities of the Cochin Co-operative Land Mortgage Bank, Limited, subsisting at the commencement of this Act shall continue to be the assets, rights and liabilities of the said Bank and the provisions of the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111, shall apply with respect to such assets, rights and liabilities.

44. **Repeals.**—The Madras Co-operative Land Mortgage Banks Act, 1934, as in force in Malabar and, subject to the provisions of section 43, the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111, are hereby repealed.

RAJENDRA PRASAD,

President.

Reasons for the enactment

The law to facilitate the working of co-operative land mortgage banks in the Malabar area of the State is contained in the Madras Co-operative Land Mortgage Banks Act, 1934. The Cochin Co-operative Land Mortgage Bank, which is functioning in the Cochin area of the State, is governed by the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111. In the Travancore area of the State there was no co-operative agency in respect of long-term credit. The Travancore Credit Bank, a joint-stock bank governed by the Travancore Credit Bank Act, IV of 1113, which was functioning in that area is now under liquidation and a bank called the Kerala Co-operative Central Land Mortgage Bank was registered for serving the long-term credit requirements of the whole of the State of Kerala. The intention is that the Kerala Co-operative Central Land Mortgage Bank should be the central financing agency and the land mortgage banks in Malabar as well as the Cochin Co-operative Land Mortgage Bank should be primary mortgage banks.

2. It was considered necessary to enact a uniform law to facilitate the working of the Central Mortgage Bank and the primary mortgage banks. A Bill was accordingly prepared and introduced in the Kerala Legislative Assembly but it could not be proceeded with further. As it has become necessary for the Central Land Mortgage Bank to issue debentures at a very early date, the measure has to be enacted as a President's Act.

3. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959 (50 of 1959), has approved the enactment of this measure.

HARI SHARMA,

Addl. Secy. to the Government of India,
Ministry of Home Affairs.

GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 3302|57|Law(B)3. *Dated, Trivandrum, 29th January, 1960.*

The following President's Act enacted on the 25th January, 1960, is published for general information.

By order of the Governor,
P. NARAYANASWAMI,
Law Secretary.

THE KERALA WAREHOUSES ACT, 1960

No. 2 of 1960

Enacted by the President in the Tenth Year of the Republic of India.

An Act to provide for the regulation and licensing of warehouses in the State of Kerala.

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959 (50 of 1959), the President is pleased to enact as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Warehouses Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "co-operative society" means a society registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932, which is engaged in any of the activities specified in sub-section (1) of section 9 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956);

(b) "depositor" means a person who tenders his goods to the warehouseman for storing in his warehouse, and includes any person who lawfully holds the receipt issued by the warehouseman in respect of such goods and derives title thereto by a proper endorsement or transfer thereof to him by the depositor or the depositor's lawful transferee;

(c) "goods" means any of the articles specified in the Schedule;

(d) "licensed warehouse" means a warehouse licensed under this Act;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "prescribed authority" means, in relation to any provision of this Act, the authority prescribed to carry out such provision;

(g) "receipt" means a receipt in the prescribed form issued by a warehouseman to a person depositing goods in the warehouse;

(h) "rules" means rules made by the Government under this Act;

(i) "warehouse" means any building, structure or other protected enclosure which is or may be used for the purpose of storing goods on behalf of depositors, but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers, and the like;

(j) "warehouseman" means a person who has obtained a licence under this Act in respect of his warehouse.

CHAPTER II

LICENSING OF WAREHOUSES

3. *Warehouseman.*—No person shall carry on the business of a warehouseman except under a licence granted under this Act and in accordance with such terms and conditions as may, from time to time, be prescribed.

4. *Grant of licence.*—(1) Application for a licence shall be made in the prescribed form to the prescribed authority.

(2) The prescribed authority may, on receiving such application and on payment of such fees as may be prescribed, grant a licence.

5. *Conditions for licence.*—Before granting a licence, the prescribed authority shall satisfy itself—

(a) that the warehouse is suitable for proper storage of the class or classes of goods in respect of which the licence has been applied for;

(b) that the applicant is competent to conduct such a warehouse;

(c) that the applicant has paid the fee prescribed for the licence and has also furnished the prescribed security, if any, provided that where the applicant is a corporation established under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956), no security need be furnished; and

(d) that there is no other cause or reason for which the applicant is, in the opinion of the prescribed authority, disqualified.

6. *Term and renewal of licence.*—Every licence granted under section 4 shall be valid for the prescribed period, and may, on application and payment of the prescribed fee, be renewed from time to time by the prescribed authority and for the prescribed period, provided the other conditions referred to in section 5 continue to be fulfilled.

7. *Notice of refusal to grant or renew licence.*—If the prescribed authority refuses to grant or renew a licence under the foregoing provisions, it shall record its reasons for such refusal in writing and forward a copy of its order to the applicant.

8. *Suspension or cancellation of licence.*—(1) Every licence granted under section 4 or renewed under section 6 may be suspended or cancelled by the prescribed authority—

(i) if in its opinion the licensee—

(a) has applied to be adjudicated, or been adjudicated, an insolvent; or

(b) has parted, in whole or in part, with his control over the warehouse; or

(c) has ceased to conduct such warehouse; or

(d) has made unreasonable charges for the services rendered by him; or

(e) has in any other manner become incompetent to conduct such warehouse; or

(f) has contravened, or failed to comply with, any of the terms and conditions of the licence or any of the provisions of this Act or the rules; or

(g) on any other prescribed ground.

(2) If a licence is suspended or cancelled, the prescribed authority shall make an entry to that effect in the licence.

(3) Whenever a licence is suspended or cancelled under this section, it shall be competent for the prescribed authority to order also a forfeiture of the security, if any, furnished by the warehouseman.

9. *Notice before suspension or cancellation of licence.*—(1) Before issuing an order of suspension, cancellation or forfeiture of security under section 8, the prescribed authority shall give notice to the warehouseman stating the grounds on which it is proposed to do so and calling upon him to show cause why such action should not be taken.

(2) After considering the explanation, if any, of the warehouseman, the prescribed authority may pass such orders as it deems just.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the prescribed authority may, if it is satisfied that it is necessary in the public interest to take immediate action, without giving the notice referred to in sub-section (1) and considering the explanation of the warehouseman, suspend a licence pending decision as to the action to be taken under sub-sections (1) and (2).

10. *Return of licence.*—When a licence expires, or is suspended or cancelled, the warehouseman shall cease to work as such and shall return the licence to the prescribed authority, who shall give reasonable time to the warehouseman to enable him to wind up the business.

11. *Duplicate licence.*—(1) Where a licence granted to a warehouseman is lost, destroyed or torn or defaced or otherwise becomes illegible, the prescribed authority shall issue a duplicate licence in the manner prescribed on the application of the warehouseman and on payment of the prescribed fee.

(2) When a duplicate licence is issued, it shall be clearly stamped "Duplicate" and shall be marked with the date of issue of the duplicate and that of the original from the record of the officer issuing the licence.

CHAPTER III

DUTIES OF A WAREHOUSEMAN

12. *Reasonable care of the goods deposited.*—Every warehouseman shall take such care of the goods deposited with him as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

13. *Precautions against damage or injury to goods.*—(1) Every warehouseman shall keep his warehouse clean and free from damp, take all necessary precautions against rats and other pests, and fulfil such other conditions as may be prescribed.

(2) No warehouseman shall accept goods for deposit which are likely to cause damage to other goods which are, or may be, deposited, in the warehouse.

14. *Preservation of identity of goods.*—Every warehouseman shall keep the goods of one depositor separate from the goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued, in such a manner as to permit at all times of the identification and delivery of the goods deposited:

Provided that where standardised and graded goods are stored in a warehouse, then, subject to any agreement between the warehouseman and a depositor, the same variety of goods belonging to different depositors may be pooled together and each depositor shall be entitled only to his portion of the goods according to weight or quantity, as the case may be, as shown in his receipt.

15. *Warehouseman to allow facilities for the depositor to inspect.*—Every warehouseman shall allow necessary facilities for the depositor to inspect and satisfy himself that his goods are properly cared for.

16. *Goods deteriorating in warehouse and their disposal.*—(1) Whenever goods deposited in a warehouse deteriorate, or are about to deteriorate from causes beyond the control of the warehouseman, he shall forthwith, give notice of such deterioration by registered post to the depositor, requiring him to take delivery of the goods immediately, after surrendering the receipt duly discharged and paying all charges due to the warehouseman.

Explanation.—Loss of weight or bulk by shrinkage or dryage or gain of weight or bulk by absorption of moisture shall be deemed to amount to deterioration within the meaning of this sub-section if the loss or gain exceeds such limits as may be prescribed.

(2) If the depositor does not, within a reasonable time, comply with a notice given to him under sub-section (1), the warehouseman may cause the goods to be removed from the warehouse and sold by public auction at the cost and risk of the depositor.

(3) Any person having an interest in any goods deposited in a warehouse or in the receipt for such goods may inform the warehouseman in writing of the fact and nature of his interest and the warehouseman shall keep a record thereof; and if such person requests in writing that intimation be given to him regarding the condition of the goods and agrees to pay the charges for giving such intimation, the warehouseman shall give him intimation accordingly.

17. *Delivery of goods.*—(1) Every warehouseman, in the absence of reasonable excuse, shall, without unnecessary delay, deliver the goods deposited in his warehouse to the depositor on demand made by him and on surrender of the receipt duly discharged and on payment of all charges due to the warehouseman.

(2) Subject to any agreement between the warehouseman and the depositor, the depositor may take partial delivery of the goods deposited in a warehouse.

18. *Liability of warehouseman for shortage or excess in goods stored.*—(1) If there is any excess in the goods stored in a warehouse by absorption of moisture or other causes, the warehouseman shall not be entitled thereto.

(2) If there is any shortage in the goods stored in a warehouse by dryage or other causes, beyond the control of the warehouseman, the warehouseman shall not be responsible therefor.

(3) In the event of a dispute arising as to whether such shortage or excess is due to dryage or absorption of moisture or is due to other causes beyond the control of the warehouseman, the matter shall be determined by arbitration.

19. *Insurance of goods in warehouses.*—(1) Every warehouseman shall insure the goods stored in his warehouse against such risks and in such manner as may be prescribed:

Provided that a depositor may at his own cost insure his goods against other risks.

(2) Every warehouseman shall be entitled to recover from the depositor, at the rate prescribed, the charges for insurance in respect of the depositor's goods before delivery thereof.

20. *Discrimination prohibited.*—No warehouseman shall, in the conduct of his business, discriminate between persons desiring to avail themselves of the facilities of his warehouse:

Provided that the warehouseman shall show such preference to co-operative societies in the State of Kerala and allow them such concessional rates as may be prescribed.

21. *Warehouseman not to deal in or lend against goods in warehouse.*—Notwithstanding anything contained in any other law, no warehouseman other than a co-operative society, shall, either on its own account or that of others, deal in, or lend money on, goods received by him for deposit in his warehouse.

22. *Accounts, etc., to be maintained.*—A warehouseman shall maintain accounts, books and records in such form and manner as may be prescribed.

CHAPTER IV

INSPECTION AND GRADING OF GOODS

23. *Inspection.*—The prescribed authority may, at any time during business hours, inspect or examine or cause to be inspected or examined, any licensed warehouse, its machinery and equipment, goods deposited therein, and the accounts, books and records relating thereto for the purpose of satisfying itself that the requirements of this Act and the rules are being complied with.

24. *Weighers, samplers and graders to obtain licences.*—(1) The prescribed authority may, on application made in the prescribed manner and on payment of the prescribed fee, issue licences to persons possessing the prescribed qualifications, entitling them to act as weighers, samplers, or graders of any goods, deposited or to be deposited in a licensed warehouse, and to issue certificates as to the weight, bulk, quality or grade of the goods which they have examined.

(2) Any certificate so issued shall, subject to the provisions of section 25 and to any order passed on a complaint preferred by either of them to the Board of Arbitrators, be binding on the warehouseman and the depositor, as to the weight, bulk, quality or grade of the goods so certified.

(3) Any complaint against weighers, samplers, graders or warehousemen relating to weight, quality or grade of the goods deposited in the warehouse shall be determined by arbitration.

(4) No person who is not licensed under this section shall act or hold himself out as a weigher, sampler or grader.

25. *Provisions regarding such licences.*—(1) Every licence granted to a weigher, sampler, or grader under section 24 shall be valid for the prescribed period and may, on application, and payment of the prescribed fee, be renewed from time to time for the prescribed period by the prescribed authority.

(2) The prescribed authority may cancel any such licence, after communicating to the licensee the grounds on which it is proposed to take action and giving him a reasonable opportunity of showing cause against it.

(3) Notwithstanding anything contained in sub-section (2), the prescribed authority may, at any time, suspend any such licence without such notice pending any action under the said sub-section.

(4) The holder of any such licence shall, on the expiry thereof or the receipt of an order suspending or cancelling it, return the licence to the prescribed authority.

26. *Facilities to be given for weighing goods, etc.*—Every warehouseman shall provide facilities for weighing, sampling and grading any goods deposited in his warehouse.

CHAPTER V

WAREHOUSE RECEIPTS

27. *Receipt to be issued.*—For the goods deposited in his warehouse by each depositor, the warehouseman shall issue a receipt which shall contain full particulars of the goods and shall be in the prescribed form.

28. *Receipts for deposits in warehouses.*—The receipt issued by a warehouseman shall, unless it is otherwise specified thereon, be transferable by endorsement and shall entitle the lawful holder thereof to receive the goods specified in it on the same terms and conditions as the original depositor.

29. *Duplicate receipt.*—If a receipt is lost, destroyed or damaged, the warehouseman shall, on application by the depositor and on payment by him of the prescribed fee, issue a duplicate receipt on such conditions as he may think fit to impose, being conditions included in rules prescribed for the purpose.

CHAPTER VI

MISCELLANEOUS

30. *Appeals against certain orders of prescribed authority.*—(1) An appeal against any order of the prescribed authority refusing to grant or renew a licence or suspending or cancelling any licence or forfeiting the security, if any, furnished by a warehouseman shall be made to such authority and within such time as may be prescribed.

(2) The decision of such appellate authority shall be final.

31. *Arbitration.*—Where under this Act any matter is required to be determined by arbitration, the matter shall be determined by a board of arbitrators consisting of three members of whom one each shall be nominated by the two parties concerned and the third by the Government or such other authority as may be empowered in this behalf by the

Government. In all other respects, the arbitration shall be subject to the provisions of the Arbitration Act, 1940 (10 of 1940) .

32. *No compensation for suspension or cancellation of licence.*—Where any licence is suspended or cancelled under this Act, the licensee shall not be entitled to any compensation therefor nor shall he be entitled to the refund of any fee paid by him for the licence.

33. *Government may help to start warehouses.*—The Government may offer any aid to the establishment of warehouses under this Act, by way of grant or lease of land, or of subsidy towards the cost of construction or by guarantee of a reasonable return on the capital invested, or in any other manner, and on such terms and conditions as may appear to the Government suitable in the circumstances of any particular case.

34. *Contracts and agreements inconsistent with Act to be void.*—Every contract or agreement which is inconsistent with the provisions of this Act, or the rules shall, to the extent of such inconsistency, be void.

35. *Penalty and procedure.*—Whoever—

(a) acts ,or holds himself out, as a licensed warehouseman without having obtained a licence under this Act, or

(b) knowingly contravenes or fails to comply with any of the provisions or requirements of this Act or the rules,

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

36. *Offences by companies.*—(1) If the person committing an offence under section 35 is a company, every person who, at the time the offence was committed ,was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 35 has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

37. *Power to amend Schedule.*—(1) The Government may, by notification in the Gazette, amend the Schedule by adding any article to, or omitting any article from, the Schedule.

(2) All references in this Act to the Schedule shall be construed as referring to such Schedule as for the time being amended in exercise of the powers conferred by sub-section (1).

38. *Rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the matters expressly required or allowed by this Act to be prescribed;

(b) the conditions to be inserted in licences to be granted to warehousemen and the form of such licences;

(c) the publication of the grant, suspension or cancellation of licences to warehousemen and of consolidated lists of warehousemen and licensed warehouses;

(d) the charges to be levied by warehousemen for their services;

(e) the books, accounts and records to be maintained by warehousemen;

(f) the conduct of public auctions for the sale of goods deteriorating or about to deteriorate in licensed warehouses and the manner in which the proceeds of such sales shall be accounted for;

(g) the scales of losses and gains of weight or bulk which may be sustained by goods owing to shrinkage or dryage in the one case and owing to absorption of moisture in the other;

(h) the disinfection of licensed warehouses and the disinfestation of goods stored therein;

(i) the manner in which any sum falling due as a result of forfeiture of security may be recovered;

(j) the efficient conduct generally of the business of warehousemen;

(k) the qualifications to be possessed by persons applying for the grant of licences as weighers, samplers or graders; the conditions to be inserted in their licences; the form of the certificates to be issued by them and the grounds for which the licences may be suspended or cancelled;

(l) the establishment and conduct of warehouses by co-operative societies;

(m) the standard weights, measures and gradations of goods to be used in licensed warehouses;

(n) the authority to which and the time within which an appeal under section 30 should be made; and

(o) the manner of giving notices under this Act.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

(4) All rules made under this section shall be laid for not less than seven days before the Legislative Assembly as soon as possible after they are made and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

39. *Power to exempt.*—The Government may, by notification in the Gazette, for reasons to be recorded, exempt any person or class of persons from all or any of the provisions of this Act.

40. *Act not to apply to certain warehouses.*—Nothing contained in this Act shall apply to any warehouse established or licensed under the provisions of the Sea Customs Act, 1878 (8 of 1878), the Inland Bonded Warehouses Act, 1896 (8 of 1896), the Central Excises and Salt Act, 1944 (1 of 1944) or the rules made thereunder.

41. *Repeals.*—The Travancore Warehouse Act, 1121, and the Madras Warehouses Act, 1951, as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

THE SCHEDULE

[*See* section 2(c)]

GOODS TO WHICH THE ACT APPLIES

(1) (a) Paddy and rice.

(b) Wheat and wheat flour.

(c) Cholam and ragi.

(d) Bengal gram, red gram and black gram and pulses of these grams.

(e) Other food-stuffs such as tapioca.

(2) (a) Oil seeds including ground nut and copra.

(b) Coconuts.

(3) Ground nut oil, lemon grass oil, coconut oil and other vegetable and aromatic oils.

(4) Fibres including cotton, palm fibres and coir and coir products.

(5) Coffee seeds, coffee powder.

(6) Tea, rubber.

(7) Arecanuts and cashewnuts.

(8) (a) Jaggery (Sugar-cane and Palmgur).

(b) Sugar.

(9) Spices and condiments including pepper, cardamom, ginger, chillies, turmeric, sezamme, coriander, onions, garlic and tamarind.

(10) Potatoes.

(11) Lemon grass.

(12) Tobacco.

RAJENDRA PRASAD,
President.

33/195

Reasons for the enactment

The law relating to warehouses in the State of Kerala is contained in the Travancore Warehouse Act, 1121, and the Madras Warehouses Act, 1951. The former Act is in force in the Travancore portion, and the latter in the Malabar portion, of the State. There is no such law in force in the remaining part of the State.

2. It was considered necessary to have a uniform law applicable to the whole State in the place of the existing enactments. A Bill was introduced in the Kerala Legislative Assembly. But since the Legislative Assembly was dissolved by the President's Proclamation dated 31st July, 1959, the Bill could not be proceeded with.

3. The Kerala State Warehousing Corporation came into existence on 20th February, 1959. According to its programme of activities three warehouses are proposed to be set up in the immediate future and another six warehouses before the expiry of the Second Plan period. In the absence of a Warehouses Act, the full benefits arising out of warehousing operations cannot be reaped by the depositors of goods in warehouses. If the warehouse receipt is to be accepted as a valid instrument for the purpose of issuing advances by bankers, special provisions therefor will have to be made. In view of the urgency and importance attached to this programme in the Second Five Year Plan Schemes, it is considered necessary to enact this measure as a President's Act.

4. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959 (50 of 1959), has approved the enactment of this measure.

HARI SHARMA,

Addl. Secy. to the Government of India,
Ministry of Home Affairs.

GOVERNMENT OF KERALA

ABSTRACT

KERALA CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES 1960—ISSUED

PUBLIC (SERVICES D) DEPARTMENT

NOTIFICATION

G.O.(P) No. 52. *Dated Trivandrum, 27th January 1960.*

In exercise of the powers conferred by the *proviso* to Article 309 of the Constitution of India, the Governor of Kerala hereby makes the following Rules, namely:—

PART I

GENERAL

1. *Short title and commencement.*—(1) These rules may be called the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

(2) They shall come into force at once.

2. *Interpretation.*—In these rules, unless the context otherwise requires,—

(a) 'Appointing Authority' in relation to a Government servant means—

(i) the authority empowered to make appointments to the Service, Class or Category of which the Government servant is for the time being a member; or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds; or

Note.—Where the power of appointment is delegated to any authority that authority will be deemed to be the Appointing Authority.

(iii) the authority which appointed the Government servant to such service, class, category or post, as the case may be; or

(iv) where the Government servant having been a permanent member of any other service, class or category or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service, class or category or to that post,

whichever authority is the highest authority.

(b) 'Commission' means the Kerala Public Service Commission;

(c) 'Disciplinary Authority', in relation to the imposition of a penalty on a Government servant, means the authority competent under these rules to impose on him that penalty;

(d) 'Government Servant' means a person who is a member of a service, State or Subordinate or who holds a civil post under the Kerala Government and includes any such person on foreign service or whose services are temporarily placed at the disposal of any other Government—Central or State—or a local or other authority and also any person in the service of any other Government—Central or State—or a local authority whose services are temporarily placed at the disposal of the Kerala Government;

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(e) 'Schedule' means the schedule to these rules;

(f) 'Services' means a group of persons classified by the State Government as a State or Subordinate Service, as the case may be.

Note.—Where the context so requires, 'service' means the period during which a person holds a post or is a member of a service as defined in these rules.

3. *Application.*—(1) These rules shall apply to all Government servants, except,

(a) Persons belonging to the All-India Services;

(b) Persons in casual employment;

(c) Persons subject to discharge from service without notice or on less than one month's notice; and

(d) Persons for whose appointment and other matters covered by these rules special provision is made by or under any law for the time being in force in regard to the matters covered by such law.

(2) Notwithstanding anything contained in sub-rule (1) these rules shall apply to every person temporarily transferred to a service or post coming within exception (c) in sub-rule (1) to whom, but for such transfer these rules would apply.

(3) Notwithstanding anything contained in sub-rule (1) the Government may by order exclude from the operation of all or any of these rules any Government servant or class of Government servants.

(4) If any doubt arises,

(a) whether these rules or any of them apply to any person; or

(b) whether any person to whom these apply belong to a particular service, the matter shall be referred to the Government whose decision thereon shall be final.

4. *Special provision by agreement.*—Where it is considered necessary to make special provisions in respect of a Government servant inconsistent with any of these rules, the Government may, by agreement with such Government servant, make such special provisions and thereupon these rules shall not apply to such Government servant to the extent to which the special provisions so made are inconsistent therewith.

5. *Protection of rights and privileges conferred by any agreement.*—Nothing in these rules shall operate to deprive any Government servant of any right or privilege to which he is entitled by the terms of any agreement subsisting between such person and the Government at the commencement of these rules.

PART II

CLASSIFICATION

6. *Classification.*—The services, the members of which are subject to these rules shall be classified as follows:

(i) The State Services; and

(ii) The Subordinate Services.

7. *State Services.*—The State Services shall consist of the services included in Schedule I.

8. *Subordinate Services.*—The Subordinate Services shall consist of the services included in Schedule II.

PART III

Appointing Authorities

9. *Appointing Authorities.*—All appointments to State and Subordinate Services shall be made by the Government:

Provided that the Government may, by general or special orders or rules and subject to such conditions as they may specify, delegate to any other Authority the power to make such appointments.

PART IV

Suspension

10. *Suspension.*—(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in that behalf may at any time place a Government servant under suspension,

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation or trial; or

(c) where final orders are pending in the disciplinary proceeding, if the appropriate authority considers that in the then prevailing circumstances it is necessary, in public interest, that the Government servant should be suspended from service.

(2) Where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(3) A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(7) Whenever a Government servant is placed under suspension he shall be paid such subsistence and other allowances admissible under the rules for the time being in force regulating such matters.

PART V

DISCIPLINE

11. *The nature of penalties.*—(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government Servant, namely:

(i) Censure;

(ii) Fine (in the case of persons on whom such penalty may be imposed under these rules);

(iii) Withholding of increments or promotion;

(iv) (a) Recovery from pay of the whole or part of any pecuniary loss caused to a State Government or the Central Government or to a local authority by negligence or breach of orders;

(b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to.

Explanation.—In cases of stoppage of increment with cumulative effect the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.

(v) Reduction to a lower rank in the seniority list or to a lower grade or post or time-scale whether in the same service or in another service, State or Subordinate, or to a lower stage in a time-scale;

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State Government which shall not be a disqualification for future employment;

(viii) Dismissal from the Civil Service of the State Government which shall ordinarily be a disqualificaton for future employment.

Explanation.—The following shall not amount to a penalty within the meaning of this rule.

(i) Withholding of increments of a Government Servant for failure to pass a departmental examination or consequential to the extension of probation in accordance with the rules or orders governing the service or post or the terms of his appointment;

(ii) Stoppage of a Government servant at the efficiency bar in the timescale on the ground of his unfitness to cross the bar;

(iii) Non-promotion whether in an officiating or substantive capacity of a Government servant, after consideration of his case, to a higher grade or post, for promotion to which he is eligible.

(iv) Reversion to a lower service, category, class, grade or post of a Government servant officiating in a higher service, category, class, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, category, class, grade or post or on administrative grounds unconnected with his conduct.

(v) Reversion to his previous service, category, class, grade or post of a Government servant appointed on probation to another service, category, class, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation.

(vi) Replacement of the services of a Government servant whose services have been borrowed from the Central Government or another State Government or a local authority at the disposal of the authority which had lent his services;

(vii) Compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(viii) *Termination of services.*—(a) of a Government servant appointed on probation, during or at the end of the prescribed or extended period of probation, in accordance with the terms of his appointment or the rules and orders governing probation; or

(b) of a Government servant employed under an agreement, in accordance with the terms of such agreement; or

(c) of a Government servant appointed otherwise than under contract to hold a temporary appointment on the expiration of the period of the appointment.

(2) The penalty of fine as such shall be imposed only on members of the subordinate services holding posts, the starting pay of which is Rs. 35 or less. The infliction of very heavy fines and frequent infliction of small fines shall be avoided.

Provided that the penalty of fine may be imposed on warders in the Jails Department drawing pay in the scale of Rs. 45-55.

12. *Imposition of special penalties in certain cases.*—Notwithstanding anything contained in Rule 11 any of the penalties mentioned in column (2) of the Appendix to these rules may be imposed on the holders of the posts in the Kerala Jails Service, the Kerala Jails Subordinate Service, the Kerala Fire Service and the Kerala Fire Subordinate Service specified in the corresponding entry in column (1) by the authorities specified in the corresponding entry in column (3) thereof.

13. *Disciplinary authorities.*—(1) The Government may impose any of the penalties specified in item (i) and (iii) to (viii) of rule 11 (1) on members of the State Services.

(2) (a) The authority which may impose the penalties of,—

(i) Censure;

(ii) Fine;

(iii) With-holding of increments on a member of a Subordinate Service shall be his immediate superior Gazetted Officer or any higher authority.

(b) The authority which may impose the penalties of,—

(i) Recovery from pay;

(ii) With-holding of promotion;

(iii) Reduction to a lower rank in the seniority list or to a lower grade or post or time-scale, whether in the same service or in another service, or to a lower stage in a time-scale;

(iv) Compulsory retirement;

(v) Removal from the Civil Service of the State Government; and

(vi) Dismissal from the Civil Service of the State Government; on a member of a Subordinate Service shall be the appointing authority or any higher authority.

(3) Where in any case a higher authority has imposed or declined to impose a penalty under this rule, a lower authority shall have no jurisdiction to proceed under this rule in respect of the same case.

(4) The order of a higher authority imposing or declining to impose in any case a penalty under this rule shall supersede any order passed by a lower authority in respect of the same case.

14. *Authority to impose penalty when promoted or transferred.*—(1) Where, on promotion or transfer, a member of a service in a class, category or grade is holding an appointment in another class, category or grade thereof or in another service, State or Subordinate, no penalty shall be imposed upon him in respect of his work or conduct before such promotion or transfer except by an authority competent to impose the penalty upon a member of the service in the latter class, category, grade or service, as the case may be.

(2) Where a person has been reverted or reduced from a State to a Subordinate Service, or from one service to another or from one class, category or grade of a service to another class, category or grade thereof, no penalty shall be imposed upon him in respect of his work or conduct while he was a member of the service, class, category or grade, as the case may be, from which he was reverted or reduced, except by an authority competent to impose the penalty upon a member of such service, class, category or grade, as the case may be.

15. *Procedure for imposing major penalties.*—(1) Without prejudice to the provisions of the Public Servants' (Inquiry) Act, 1850 (Central Act XXXVII of 1850), and the Public Servants' (Inquiries) Act, 1122 (Act XI of 1122), no order imposing on a Government servant any of the penalties specified in items (v) to (viii) of rule 11 (1) shall be passed except after an inquiry held as far as may be, in the manner hereinafter provided.

(2) (a) Whenever a complaint is received, or on consideration of the report of an investigation, or for other reasons, the disciplinary authority or any other authority empowered by Government in this behalf is satisfied that a formal enquiry should be held into the conduct of a Government servant, a formal enquiry may be ordered.

(b) The formal inquiry may be conducted by,—

(i) the Government;

(ii) the appointing authority;

(iii) the disciplinary authority;

(iv) the head of the department or any officer of the department empowered by the appointing authority or the head of the department; or

(v) a special officer or tribunal appointed by the Government for the purpose or a tribunal generally appointed for making enquiries into the conduct of Government servants.

Explanation.—In this sub-rule the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties specified in items (i) to (iv) of rule 11 (1).

(3) The authority or officer conducting the inquiry (hereinafter referred to as the Inquiring Authority) shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the Government

servant and he shall be required to submit, within such time as may be specified by the Inquiring Authority, a written statement of his defence and also to state whether he desires to be heard in person.

(4) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Inquiring Authority, such records are not relevant for the purpose or it is against the public interest to allow him access thereto.

(5) On receipt of the written statement of defence or if no such statement is received within the time specified the Inquiring Authority may inquire into such of the charges as are not admitted.

(6) The Disciplinary Authority if it is not the Inquiring Authority may nominate any person to present the case in support of the charges before the Inquiring Authority. The Government servant may present his case with the assistance of any other Government servant approved by the Inquiring Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Inquiring Authority having regard to the circumstances of the case, so permits.

(7) The Inquiring Authority shall, in the course of the Inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to have such witnesses, as may be produced, examined in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witnesses on the ground that his evidence is not relevant or material it shall record its reasons in writing.

Note.—If the Inquiring Authority proposes to rely on the oral evidence of any witness, the authority should examine such witness and give an opportunity to the accused Government servant to cross-examine the witness. Any previous written record of a statement made by a witness shall not be used or relied on and shall not form part of the record of the inquiry except where the Government servant agrees in writing to treat it as such.

(8) The Government servant may present to the Inquiring Authority a list of witnesses whom he desires to examine in his defence. The Inquiring Authority will normally request such witnesses to appear before him to give evidence and where the witness to be examined is a Government servant, the Inquiring Authority will normally try to secure the presence of the witness, unless he is of the view that the witness's evidence is irrelevant or not material to the case under inquiry. Where the witness proposed to be examined by the Government servant is a non-official, the Inquiring Authority will be under no obligation to summon and examine him unless the Government servant himself produces him for examination.

(9) At the conclusion of the Inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from

those originally framed, it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them.

(10) The record of the inquiry shall include,—

(i) the charges framed against the Government servant and the statement of allegations furnished to him under sub-rule (3);

(ii) his written statement of defence, if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and

(vi) a report setting out the findings on each charge and the reasons therefor.

(11) The Disciplinary Authority, where it is not the Government, shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge. Where the disciplinary authority is Government, it shall consider the records of the inquiry and where it is considered necessary to depart from the findings of the Inquiring Authority, record its provisional findings on each charge with reasons thereof.

(12) (i) If the Disciplinary Authority, having regard to the findings on the charges, is of the opinion that any of the penalties specified in items (v) to (viii) of rule 11 (1) should be imposed, it shall,—

(a) furnish to the Government servant a copy of the report of the Inquiring Authority and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time which may not generally exceed one month such representation as he may wish to make against the proposed action.

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (i) and the representation made in response to such notice, if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice.

(b) On receipt of the advice of the Commission the Disciplinary Authority shall consider the representation, if any, made by the Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(iii) In any case in which it is not necessary to consult the Commission the Disciplinary Authority shall consider the representation, if any, made by the Government servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(13) If the Disciplinary Authority having regard to its findings is of the opinion that any of the penalties specified in items (i) to (iv) of rule 11 (1) should be imposed, it shall pass appropriate orders in the case:

Provided that in every case in which it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice taken into consideration before passing the orders.

(14) Orders passed by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the Inquiring Authority, and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority, unless they have already been supplied to him, and also a copy of the advice, if any, given by the Commission and where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

(15) The procedure referred to above shall be conducted as expeditiously as the circumstances of the case may permit, particularly one against an officer under suspension.

16. *Procedure for imposing minor penalties.*—(1) No order imposing any of the penalties specified in items (i) to (iv) of rule 11 (1) shall be passed except after,

(a) the Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given opportunity to make any representation he may wish to make;

(b) such representation, if any, is taken into consideration by the Disciplinary Authority; and

(c) the Commission is consulted in cases where such consultation is nessary.

(2) The record of proceedings in such cases shall include,

(i) A copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) A copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the advice of the Commission, if any; and

(v) the orders of the case together with the reasons therefor.

17. *Joint Inquiry.*—Where two or more Government servants are concerned in any case, the authority competent to impose the penalty of dismissal from service on all such Government servants or a higher authority may make an order directing that disciplinary action against all of them may be taken in a common proceedings and specifying the authority which may function as the Inquiring Authority for the purpose of such common proceedings.

18. *Special Procedure in certain cases.*—Notwithstanding anything contained in rules 15, 16 and 17,

(i) where a penalty is imposed on a Government servant on the ground of conduct which had led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) where the State Government for reasons to be recorded in writing is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure;

the Disciplinary authority may consider the circumstance of the case and pass such orders thereon as it deems fit.

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary.

19. *Provisions regarding officers lent to other Governments, etc.*—(1) Where the services of a Government servant are lent to another Government—Central or State—or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority") the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing him under suspension and of the Disciplinary Authority for the purpose of taking a disciplinary proceeding against him;

Provided that the borrowing authority shall forthwith inform the authority which lent his services (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding taken against the Government servant,

(i) if the borrowing authority is of the opinion that any of the penalties specified in items (i) to (iv) of rule 11(1) should be imposed on him, it may in consultation with the lending authority pass such orders on the case as it deems necessary,

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be placed at the disposal of the lending authority.

(ii) if the borrowing authority is of the opinion that any of the penalties specified in items (v) to (viii) of rule 11(1) should be imposed on him, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the Disciplinary Authority, pass such orders thereon as it deems necessary, or if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass such orders on the case as it deems necessary:

Provided that in passing any such order the Disciplinary Authority shall comply with the provisions of sub-rule (11) and (12) of rule 15.

Explanation: The Disciplinary Authority may make an order under this clause on the record of the inquiry transmitted by the borrowing authority or after holding such further inquiry as it may deem necesary.

20. *Provisions regarding officers borrowed from other Governments, etc.*—(1) Where an order of suspension is made or a disciplinary proceeding is taken against a Government servant whose services have been borrowed from another Government—Central or State—or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be.

(2) In the light of the findings in the disciplinary proceeding taken against the Government servant,

(i) if the Disciplinary Authority is of the opinion that any of the penalties specified in items (i) to (iv) of rule 11(1) should be imposed

on him, it may, subject to the provisions of sub-rule (12) of rule 16 and after consultation with the lending authority, pass such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the Disciplinary Authority is of the opinion that any of the penalties specified in items (v) to (viii) or rule 11(1) should be imposed on him it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the Inquiry for such action as it deems necessary.

PART VI

APPEALS

21. *Orders not appealable.*—There shall be no appeal against any order passed under the provisions of these rules except as expressly provided in these rules.

22. *Appeals against orders of suspension.*—A Government servant may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinate.

23. *Appeals against orders imposing penalties.*—Every member of service—State or Subordinate—shall be entitled to appeal as hereinafter provided against an order,—

(a) imposing upon him any of the penalties specified in rule 11(1); or

(b) discharging him in accordance with the terms of his contract, if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under either form of contract continuous service for a period exceeding five years at the time when his services are terminated;

to the authority to which the authority imposing the penalty is immediately subordinate;

Provided that where an order is passed by the Government, there shall be no appeal.

In this rule the expression 'member of a service' includes a person who has ceased to be a member of that service.

24. *Appeal against other orders.*—(1) A Government servant may appeal against an order which,

(a) denies or varies to his disadvantage his pay, allowances pension or other conditions of service as regulated by any rules or by agreement; or

(b) interprets to his disadvantage the provisions of any such rules or agreement;

to the authority which made such rules or agreement.

(2) An appeal against an order,—

(a) stopping a Government servant at the efficiency bar in the time-scale on the ground of his unfitness to cross the bar;

(b) reverting to a lower service, grade or post, a Government servant officiating in a higher service, grade or post, otherwise than as a penalty; and

(c) determining the pay and allowances for the period of suspension to be paid to a Government servant on his reinstatement or determining whether or not such period shall be treated as period spent on duty for any purpose, shall lie:—

(i) in the case of Gazetted servant to Government;

(ii) in the case of an order made in respect of any other Government servant to the authority to whom the authority imposing the penalty is immediately subordinate.

Explanation.—In this rule, the expression Government Servant includes a person who has ceased to be in Government Service.

25. *Period of limitation for appeals.*—No appeal under this part shall be entertained unless it is submitted within a period of two months from the date on which the appellant receives a copy of the order appealed against:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

Note.—The appellate authority which receives a copy of an appeal submitted direct should not take any action on such copy until the period for receipt of the copy of the appeal forwarded through the appropriate channel or a period of one month whichever is earlier, is over.

26. *Form and contents of appeal.*—(1) Every person submitting an appeal shall do so separately and in his own name.

(2) The appeal shall be addressed to the authority to whom the appeal lies, shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

27. *Submission of appeals.*—Every appeal shall be submitted to the authority which made the order appealed against:

Provided that if such authority is not the head of the Office in which the appellant may be serving or, if he is not in service, the head of the office in which he was last serving, or is not subordinate to the head of such office, the appeal shall be submitted to the head of such office who shall forward it forthwith to the said authority:

Provided further that a copy of the appeal may be submitted direct to the appellate authority.

28. *Withholding of appeals.*—(1) The authority which made the order appealed against may withhold the appeal if,

(i) it is an appeal against an order from which no appeal lies; or

(ii) it does not comply with any of the provisions of rules 26 and 27; or

(iii) it is not submitted within the period specified in rule 25 and no cause is shown for the delay; or

(iv) it is a repetition of an appeal already decided and no new facts or circumstances are adduced; or

(v) if it is addressed to an authority to which no appeal lies under these rules:

Provided that an appeal withheld on the only ground that it does not comply with the provisions of rules 26 and 27 shall be returned to the appellant and, if resubmitted within one month thereof after compliance with the said provisions shall not be withheld.

(2) Where an appeal is withheld, the appellant shall be informed of the fact and the reasons therefor.

(3) When the appeal is withheld, the authority withholding the appeal shall forward a copy of the order communicated to the Government servant to the appellate authority.

29. *Transmission of Appeals.*—(1) The authority which made the order appealed against shall, without any avoidable delay, transmit to the appellate authority every appeal which is not withheld under rule 28 together with its comments thereon and the relevant records.

(2) The authority to which the appeal lies may direct transmission to it of any appeal withheld under rule 28 and thereupon such appeals shall be transmitted to that authority together with the comments of the authority withholding the appeal and the relevant records.

30. *No appeal from an order withholding an appeal.*—No appeal shall lie against the withholding of an appeal by a competent authority.

31. *Consideration of appeals.*—(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 (1) the appellate authority shall consider,

(a) Whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient grounds for taking action;

(c) whether the procedure prescribed in these rules has been complied with, and if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(d) whether the findings are justified; and

(e) whether the penalty imposed is excessive, adequate or inadequate; and after consultation with the Commission, if such consultation is necessary in the case, pass orders,—

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that,

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in items (v) to (viii) of rule 11(1) and an inquiry under rule 15 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 18, itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the appellant

an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(3) In the case of an appeal against any order specified in rule 24, the appellate authority shall consider all the circumstances of the case and pass such orders as it may deem just and equitable.

32. *Implementation of orders on appeal.*—The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

33. *Procedure when the authority who imposed the penalty becomes the appellate authority.*—Notwithstanding anything contained in this part, where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority under rules 22 to 24 in respect of the appeal against such order, such person shall forward the appeal to the authority to which he is immediately subordinate and such authority shall in relation to that appeal, be deemed to be the appellate authority for the purpose of rules 31 and 32.

Note.—An Officer of the Secretariat on receiving an appeal to Government on a case which has been previously disposed of by him in a different capacity shall forward it to the Secretary of the Department or where he himself is the Secretary, to such officer as the Chief Secretary may designate, for scrutiny and disposal according to the Rules of Business.

PART VII

REVIEW

34. *State Government's power to review.*—Notwithstanding anything contained in these rules, the State Government may, on their own motion or otherwise, after calling for the records of the case, review any order passed by a subordinate authority which is made or is appealable under these rules or the rules repealed by rule 39 and, after consultation with the Commission where such consultation is necessary,—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as they consider proper in the circumstances of the case; or

(d) pass such other order as they deem fit:

Provided that,

(i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;

(ii) if the State Government propose to impose any of the penalties specified in items (v) to (viii) of rule 11 (1) on a case where an inquiry under rule 15 has not been held, he shall, subject to the provisions of rule 18, direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as they may deem fit.

35. *Review of original orders.*—There shall be a review of original orders, on application of party, by Government. There shall be only one review and application for review shall be made within a period of two months from the date of the order.

36. *Powers of Government to call for records at any stage.*—The Government may call for the record of any inquiry at any stage pending before any authority other than a tribunal appointed under these rules and may themselves conduct the inquiry or pass such other orders in accordance with these rules, as they think fit having regard to the circumstances of each case.

37. *Review of orders by appellate authorities.*—The authority to which an appeal against an order imposing any of the penalties specified in rule 11 (1) lies may of its own motion or otherwise, call for the records of the case in a disciplinary proceedings, review any order passed in such a case and, after consultation with the Commission where such consultation is necessary, pass such orders as it deems fit, as if the Government servant had preferred an appeal against such order:

Provided that no application for review shall be entertained after the expiry of a period of one month from the date of passing the order:

Provided further that no action under this rule shall be initiated more than one year after the date of the order to be reviewed.

PART VIII

38. *Submission of report.*—Every authority other than the Government empowered to impose any of the penalties specified in rule 11 (1) shall submit to the Government in the administrative department concerned a quarterly statement of cases where any of the aforesaid penalties have been imposed or where a member of a service is suspended under rule 10. Every appellate authority other than the Government shall likewise submit a quarterly statement of cases disposed of to the Government in the administrative department.

PART IX

MISCELLANEOUS

39. *Repeal and Savings.*—(1) The Kerala Civil Services (Classification, Control and Appeal) Rules, 1957, are hereby repealed:

Provided that,—

(a) such repeal shall not affect the previous operation of the said rules, notifications and orders or anything done or any action taken thereunder;

(b) any proceedings under the said rules, notifications or orders pending at the commencement of these rules shall be continued and disposed of as far as may be, in accordance with the provisions of these rules.

(2) Nothing in these rules shall operate to deprive any person to whom these rules apply of any right of appeal which had accrued to him under the rules repealed by sub-rule (1) in respect of any order passed before the commencement of these rules.

(3) An appeal pending at or preferred after the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be passed, in accordance with these rules.

10. *Removal of doubts.*—Where a doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the State Government whose decision thereon shall be final.

By order of the Governor,

N. E. S. RAGHAVACHARI,

Chief Secretary to Government.

SCHEDULE I

(*See* Rule 7)

KERALA STATE SERVICES

1. The Kerala Agricultural Service.
2. The Kerala Agricultural Income-tax and Sales-tax Service.
3. The Kerala Animal Husbandry Service.
4. The Kerala Civil Service (Executive).
5. The Kerala Co-operative Service.
6. The Kerala Educational Service.
7. The Kerala Engineering Service.
8. The Kerala Excise and Prohibition Service.
9. The Kerala Fire Service.
10. The Kerala Fisheries Service.
11. The Kerala Forest Service.
12. The Kerala General Service.
13. The Kerala Government Presses Service.
14. The Kerala Harijan Welfare Service.
15. The Kerala Health Service.
16. The Kerala Hindu Religious and Charitable Endowments Service.
17. The Kerala Industries Service.
18. The Kerala Jails Service.
19. The Kerala Labour Service.
20. The Kerala Local Fund Audit Service.
21. The Kerala Municipal Commissioners' Service.
22. The Kerala National Employment Service.
23. The Kerala Public Health Engineering Service.
24. The Kerala Public Relations Service.
25. The Kerala Registration Service.
26. The Kerala Revenue Service.
27. The Kerala Secretariat Service.
28. The Kerala State Transport Service.
29. The Kerala Stationery Service.
30. The Kerala Statistics and Economics Service.
31. The Kerala Survey and Land Records Service.
32. The Kerala Transport Service.

SCHEDULE II

(*See* Rule 8)

KERALA SUBORDINATE SERVICES

1. The Kerala Agricultural Subordinate Service.
2. The Kerala Agricultural Income-tax and Sales-tax Subordinate Service.
3. The Kerala Animal Husbandry Subordinate Service.
4. The Kerala Archaeological Subordinate Service.
5. The Kerala Co-operative Subordinate Service.
6. The Kerala Educational Subordinate Service.
7. The Kerala Engineering Subordinate Service.
8. The Kerala Excise and Prohibition Subordinate Service.
9. The Kerala Fire Subordinate Service.
10. The Kerala Fisheries Subordinate Service.
11. The Kerala Forest Subordinate Service.
12. The Kerala General Subordinate Service.
13. The Kerala Government Presses Subordinate Service.
14. The Kerala Harijan Welfare Subordinate Service.
15. The Kerala Health Subordinate Service.
16. The Kerala Industries Subordinate Service.
17. The Kerala Jails Subordinate Service.
18. The Kerala Judicial Ministerial Service.
19. The Kerala Labour Subordinate Service.
20. The Kerala Last Grade Service.
21. The Kerala Local Fund Audit Subordinate Service.
22. The Kerala Ministerial Subordinate Service.
23. The Kerala National Employment Subordinate Service.
24. The Kerala Public Health Engineering Subordinate Service.
25. The Kerala Public Relations Subordinate Service.
26. The Kerala Registration Subordinate Service.
27. The Kerala Revenue Subordinate Service.
28. The Kerala Secretariat Subordinate Service.
29. The Kerala Stationery Subordinate Service.
30. The Kerala Statistics and Economics Subordinate Service.
31. The Kerala State Transport Subordinate Service.
32. The Kerala Survey and Land Records Subordinate Service.
33. The Kerala Transport Subordinate Service.

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Appendix

(*See Rule* 12)

Posts. (1)	*Penalties.* (2)	*Authority which may impose the penalties.* (3)
	THE KERALA FIRE SERVICE	
Divisional Fire Officer	Reprimand	Superintendent of Police concerned.
	THE KERALA FIRE SUBORDINATE SERVICE	
1. Sub Officers including Engineering Sub Officers	Reprimand	Superintendent of Police concerned.
2. Officers of and below the rank of Leading Firemen	Blackmark	Divisional Fire Officer concerned.
	THE KERALA JAILS SERVICE	
Superintendents and Jailors of Central Jails	Reprimand	Deputy Inspector-General of Prisons or Inspector-General of Prisons.
	THE KERALA JAILS SUBORDINATE SERVICE	
1. Dy. Jailors of Central Jails, Jailors, Special Sub Jails	Reprimand	Superintendent of Central Jail or Special Sub. Jail as the case may be.
2. Sub Jail Superintendents	Reprimand or removal from office of special emoluments	Dy. Inspector-General of Prisons or Inspector-General of Prisons.
3. Assistant Jailors I and II grades	Removal from office of special emoluments	Dy. Inspector-General of Prisons or Inspector-General of Prisons.
	Reprimand	Superintendents of Central Jail, Special Sub Jail or Borstal School as the case may be.
4. Chief Warders, Gate Keepers, Reserve Head Warders and Head Warders	Removal from office of special emoluments	Dy. Inspector-General of Prisons or Inspector-General of Prisons.
	Reprimand or blackmark	Superintendent of Central Jails, Special Sub Jails, A-Class Sub Jails or Borstal School as the case may be.

Posts. (1)	Penalties. (2)	Authority which may impose the penalties. (3)
5. Warders I and II grades	Petty punishments such as extra drill, extra guard and fatigue duty; reprimand or black mark	Superintendent of Central Jails, Special Sub Jails, A-class Sub Jails or Borstal School, as the case may be.
	Removal from office of special emoluments	Dy. Inspector-General of Prisons or Inspector-General of Prisons.

Note:—1. None of the penalties specified in the Appendix shall be imposed except for good and sufficient reasons.

2. No appeal shall lie against any of the said penalties.

GOVERNMENT OF KERALA

Abstract

KERALA CIVIL SERVICES (DISCIPLINARY PROCEEDINGS TRIBUNAL) RULES, 1960—ISSUED.

PUBLIC (SERVICES D) DEPARTMENT

G. O. (P) No. 53. Dated, Trivandrum, 27-1-1960.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, and of all other powers hereunto enabling and in supersession of the existing Rules on the subject, the Governor of Kerala hereby makes the following rules, namely:—

RULES

1. (a) These rules may be called the Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960.

(b) They shall come into force on 1-1-1960.

(c) They shall apply to all officers under the rule-making control of the State Government other than those referred to in Article 314 of the Constitution of India.

2. In these rules,—

(a) 'Corruption' shall have the same meaning as 'criminal misconduct in the discharge of official duties' under Section 5(1) of the Prevention of Corruption Act, 1947 (Central Act II of 1947).

(b) 'Government' means the Government of Kerala.

(c) 'Tribunal' means the Tribunal for Disciplinary Proceedings.

(d) Expressions used, but not defined in these rules, shall have the meanings assigned to them under the Kerala Civil Services (Classification, Control and Appeal, Rules, 1960.

3. (a) The Tribunal shall consist of a judicial officer who has worked or is eligible to be appointed as District and Sessions Judge.

(b) Appointment to the Tribunal shall be made by the Government.

4. The Government may refer to the Tribunal any case or class of cases, which, they consider, should be dealt with by the Tribunal.

5. (a) If on a complaint or other information received and after such investigation, if any, as may be deemed necessary, the disciplinary authority or the appointing authority or any officer or authority empowered by Government in this behalf is satisfied that there is a *prima facie* case for taking action against an officer before the Tribunal, the authority shall forward to Government all the records of the case,

(b) The Government may, after examining such records and after making such consultations as may be deemed necessary, decide whether the case shall be proceeded with and if so, whether it shall be tried by the Tribunal.

(c) The departmental authorities may also send to the Government the records of cases other than of corruption which they think fit to be tried by the Tribunal and the Government shall decide whether they shall be tried by the Tribunal or not.

(d) If the Government decide that the case shall be tried by the Tribunal, they shall send the records to the Tribunal.

(e) When the Tribunal is seized of the case all Departments of Government shall assist the Tribunal in the production of witnesses, in securing the necessary documents, and in such other ways as the Tribunal may desire.

(f) Government may appoint an appropriate authority by general or special order to present the case against an accused Government servant in disciplinary cases before the Tribunal. Where the authority so designated is a legal practitioner, the accused Government servant concerned shall be allowed, on request, to be represented by counsel.

6. (a) The Tribunal may in its discretion and with the consent of Government co-opt an assessor to assist it.

(b) For the purpose of sub-rule (a), in any case where more than one Government servant is charged, the assessor shall be an officer above the rank of the highest Government servant charged.

7. (a) The Tribunal may sit at such places in the State as it may determine with due regard to the convenience of the parties concerned and expenses involved.

(b) The proceedings of the Tribunal shall be *in camera*.

8. (1) As soon as the records relating to a case referred to it are received by the Tribunal, the Tribunal shall frame appropriate charges along with statements of facts on which each of the charges are based and communicate them to the person charged together with a list of witnesses likely to be examined.

(2) The Tribunal shall also inform the accused Government servant of the date, time and place of enquiry and whether the accused Government servant may be represented by legal practitioner, if he so desires.

(3) At the appointed time and place or on such other date to which the proceedings may be adjourned, the enquiry shall commence. At the enquiry the oral and documentary evidence on behalf of the prosecution should be first adduced and the accused Government servant or his representative, including a legal practitioner where one is permitted, shall be entitled to cross-examine the prosecution witnesses.

(4) The person charged shall thereafter within the time allowed by the Tribunal file a written statement along with a list of witnesses whom he wishes to examine.

(5) The oral and documentary evidence produced by the Government servant shall then be adduced. The prosecution shall be entitled to cross-examine the defence witnesses including the accused Government servant, if he elects to give evidence.

(6) The Tribunal may at any stage put in questions to the witnesses adduced by the prosecution or by the defence and to the accused Government servants and also may examine of its own accord any witness at its discretion.

(7) As each witness is examined, the statement of the witness shall be reduced to writing and at the conclusion of his evidence it shall be read over to him and signed by him in the presence of the Tribunal.

(8) After all the evidence is recorded, the person charged will be entitled to advance the necessary arguments either orally or in writing or both and the prosecution will have a right of reply.

(9) After all the evidence and the arguments have been heard the Tribunal shall record its findings in respect of each charge and in case the accused Government servant is held guilty of any charge, it shall recommend to Government the punishment to be imposed. Where an accused officer is found not guilty of any charge and has been under suspension during the enquiry, the Tribunal shall also state whether the accused's conduct in respect of the charges and during the conduct of the trial has been such as to justify the period of suspension being treated, wholly or in part, as duty.

(10) The Government shall consider the report of the Tribunal and after examining the records of the case in the light of the findings of the Tribunal record its provisional conclusions on each of the charges, and also, where the accused Government servant is found guilty, the penalty proposed to be imposed. Where the Government differs from the findings of the Tribunal in respect of any charge, it shall set out its reasons for differing from the findings of the Tribunal.

(11) Where the Government comes to the provisional conclusion that a punishment of reduction, removal, dismissal or compulsory retirement, otherwise than in accordance with the rules regulating superannuation or retirement of the Government servant concerned, should be imposed on the accused Government servant, it shall furnish the accused Government servant with the copy of the findings of the Tribunal and its reasons thereof, the provisional conclusions arrived at by Government with the reasons thereof and the punishment proposed to be imposed and ask the Government servant to show cause within a reasonable time not ordinarily exceeding fifteen days against the particular penalty proposed to be inflicted.

(12) On receipt of the reply of the Government servant or where no such reply is received, after the period for giving the reply is over, Government shall pass final orders in the case; provided that in cases where the Public Service Commission has to be consulted, the records of the case along with the accused Government servant's reply, if any, shall be forwarded to the Commission and its advice taken into consideration before a final decision is taken.

(13) Where the Government servant concerned has absconded and where the Tribunal for any other reason to be recorded in writing is satisfied that it is impracticable to communicate with the Government servant concerned, the enquiry may proceed in the absence of the Government servant as far as possible in accordance with the above procedure and with such modifications as may be deemed necessary by the Tribunal in the circumstances of the case.

Notwithstanding anything contained in these rules, any enquiry started before the publication of these rules shall be conducted as if these rules have not come into force.

By order of the Governor,

N. E. S. RAGHAVACHARI,

Chief Secretary.